



DEPARTMENT OF HOMELAND SECURITY

6 CFR Part 5

[Docket No. DHS-2018-0075]

Privacy Act of 1974: Implementation of Exemptions; Department of Homeland Security U.S. Immigration and Customs Enforcement-007 Criminal History and Immigration Verification (CHIVe) System of Records

AGENCY: Office of the Secretary, Department of Homeland Security.

ACTION: Final rule.

SUMMARY: The Department of Homeland Security (DHS) is issuing a final rule to amend its regulations to exempt portions of an updated and reissued system of records titled, “Department of Homeland Security/Immigration and Customs Enforcement-007 Criminal History and Immigration Verification (CHIVe) System of Records” from certain provisions of the Privacy Act. Specifically, the Department exempts portions of this system of records from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements.

DATES: This final rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: For general questions please contact: Jordan Holz, (202-732-3300), Acting Privacy Officer, U.S. Immigration and Customs Enforcement, Washington, DC 20536. For privacy issues please contact: Jonathan R. Cantor (202-343-1717), Acting Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, D.C. 20528.

SUPPLEMENTARY INFORMATION:

I. Background:

The Department of Homeland Security (DHS) U.S. Immigration and Customs Enforcement (ICE) published a notice of proposed rulemaking (NPRM) in the *Federal Register* (83 FR 20738, May 8, 2018) proposing to exempt portions of DHS/ICE-007 Criminal History and Immigration Verification (CHIVe) System of Records from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements. This system of records was published concurrently in the *Federal Register* (83 FR 20844, May 8, 2018), and comments were invited on both the NPRM and SORN.

II. Public Comments:

DHS received six comments on the NPRM and 92 on the SORN.

NPRM and SORN

DHS has reviewed the six comments received for the NPRM and the 92 comments for the SORN. Because the comments submitted for both the SORN and NPRM were similar in nature, DHS has summarized them based on the nature of the comment. The comments primarily discussed the following:

- Objecting to the Department of Health and Human Services (HHS) using immigration status as a factor in granting or denying an application for a potential Unaccompanied Alien Child (UAC) sponsor;
- Objecting to ICE's involvement in the UAC sponsor screening process by collecting information on potential UAC sponsors and other adult members of

those sponsors' households, determining these individuals' immigration statuses, and sharing that information with HHS;

- Stating that this new process is not in the best interests of the child, and that children will be denied sponsors who could provide suitable living environments; and
- Objecting to the potential separation of families, when this would not be in the best interests of the child.

These comments pertain to ICE's involvement in the UAC sponsor screening process. In this process, ICE shares very limited information with HHS for a discrete purpose. Under its legal authority, ICE shares immigration status and limited criminal history information with HHS to inform an HHS determination whether to grant or deny a UAC sponsorship application.

Though this process involves the sharing of information, the comments received do not pertain to the Privacy Act exemptions proposed by DHS in this rulemaking.

Therefore, DHS will implement the rulemaking as proposed.

List of Subjects in 6 CFR Part 5

Freedom of information, Privacy.

For the reasons stated in the preamble, DHS amends chapter I of title 6, Code of Federal Regulations, as follows:

PART 5--DISCLOSURE OF RECORDS AND INFORMATION

1. The authority citation for part 5 continues to read as follows:

Authority: 6 U.S.C. 101 *et seq.*; Pub. L. 107-296, 116 Stat. 2135; 5 U.S.C. 301.

Subpart A also issued under 5 U.S.C. 552.

Subpart B also issued under 5 U.S.C. 552a.

2. Amend appendix C to part 5 by adding paragraph 80 to read as follows:

Appendix C to Part 5 – DHS Systems of Records Exempt From the Privacy Act

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80. The DHS/ICE-007 Criminal History and Immigration Verification (CHIVe) System of Records consists of electronic and paper records and will be used by DHS and its components. The CHIVe System of Records is a repository of information held by DHS in connection with its several and varied missions and functions, including the enforcement of civil and criminal laws; investigations, inquiries, and proceedings thereunder; and national security and intelligence activities. The CHIVe System of Records contains information that is collected by, on behalf of, in support of, or in cooperation with DHS and its components and may contain personally identifiable information collected by other federal, state, local, tribal, foreign, or international government agencies. The Secretary of Homeland Security, pursuant to 5 U.S.C. 552a(j)(2), has exempted this system from the following provisions of the Privacy Act: 5 U.S.C. 552a(c)(3) and (c)(4); (d); (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8); (f); and (g). Additionally, the Secretary of Homeland Security, pursuant to 5 U.S.C. 552a(k)(2), has exempted this system from the following provisions of the Privacy Act: 5 U.S.C. 552a(c)(3); (d); (e)(1), (e)(4)(G), (e)(4)(H); and (f). Exemptions from these particular subsections are justified, on a case-by-case basis to be determined at the time a request is made, for the following reasons:

(a) From subsection (c)(3) and (4) (Accounting for Disclosures) because release of the accounting of disclosures could alert the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of that investigation and reveal investigative interest on the part of DHS as well as the recipient agency. Disclosure of the accounting would therefore present a serious impediment to law enforcement efforts and/or efforts to preserve national security. Disclosure of the accounting would also permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension, which would undermine the entire investigative process. Information on a completed investigation may be withheld and exempt from disclosure if the fact that an investigation occurred remains sensitive after completion.

(b) From subsection (d) (Access and Amendment to Records) because access to the records contained in this system of records could inform the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of that investigation and reveal investigative interest on the part of DHS or another agency. Access to the records could permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension. Amendment of the records could interfere with ongoing investigations and law enforcement activities and would impose an unreasonable administrative burden by requiring investigations to be continually reinvestigated. In addition, permitting access and amendment to

such information could disclose security-sensitive information that could be detrimental to homeland security.

- (c) From subsection (e)(1) (Relevancy and Necessity of Information) because in the course of investigations into potential violations of federal law, the accuracy of information obtained or introduced occasionally may be unclear, or the information may not be strictly relevant or necessary to a specific investigation. In the interests of effective law enforcement, it is appropriate to retain all information that may aid in establishing patterns of unlawful activity.
- (d) From subsection (e)(2) (Collection of Information from Individuals) because requiring that information be collected from the subject of an investigation would alert the subject to the nature or existence of the investigation, thereby interfering with that investigation and related law enforcement activities.
- (e) From subsection (e)(3) (Notice to Subjects) because providing such detailed information could impede law enforcement by compromising the existence of a confidential investigation or reveal the identity of witnesses or confidential informants.
- (f) From subsections (e)(4)(G), (e)(4)(H), and (e)(4)(I) (Agency Requirements) and (f) (Agency Rules), because portions of this system are exempt from the individual access provisions of subsection (d) for the reasons noted above, and therefore DHS is not required to establish requirements, rules, or procedures with respect to such access. Providing notice to individuals with respect to existence of records pertaining to them in the system of records or otherwise setting up procedures pursuant to which individuals may access and view records pertaining

to themselves in the system would undermine investigative efforts and reveal the identities of witnesses, and potential witnesses, and confidential informants.

(g) From subsection (e)(5) (Collection of Information) because with the collection of information for law enforcement purposes, it is impossible to determine in advance what information is accurate, relevant, timely, and complete. Compliance with subsection (e)(5) would preclude DHS agents from using their investigative training and exercise of good judgment to both conduct and report on investigations.

(h) From subsection (e)(8) (Notice on Individuals) because compliance would interfere with DHS's ability to obtain, serve, and issue subpoenas, warrants, and other law enforcement mechanisms that may be filed under seal and could result in disclosure of investigative techniques, procedures, and evidence.

(j) From subsection (g) (Civil Remedies) to the extent that the system is exempt from other specific subsections of the Privacy Act.

Jonathan R. Cantor,
Acting Chief Privacy Officer,
Department of Homeland Security.

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